



AFW

Substitute PTO/SB/21
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE**TRANSMITTAL FORM**

(to be used for all correspondence after initial filing)

Application Number	10/828,630
Filing Date	04/09/2004
First Named Inventor	Jill E. Parker
Art Unit	1645
Examiner Name	Mark Navarro

Total Number of Pages in this Submission

4

Attorney Docket Number

AFD 503

ENCLOSURES (check all that apply)

Fee Transmittal Form

☐ Fee Attached

Amendment / Reply

☐ After Final☐ Affidavits/declaration(s)☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Document(s)☐ Drawing(s)☐ Licensing-related Papers☐ Petition☐ Petition to Convert a
Provisional Application☐ Power of Attorney, Revocation
Change of Correspondence Address☐ Terminal Disclaimer☐ Request for Refund☐ CD, Number of CD(s) _____☐ Landscape Table on CD☐ After Allowance Communication to TC☐ Appeal Communication to Board of
Appeals and Interferences☒ Appeal Communication to a Group
(Reply Brief)☐ Proprietary Information☐ Status LetterOther Enclosure(s) (please identify
below):

Remarks



There is no fee for this Reply Brief.

Please date-stamp and return the attached Return Receipt Postcard.

SIGNATURE OF APPLICANT, ATTORNEY OR AGENTFirm
or
Individual Name

Paul D. Heydon

Signature

Date

13 September, 2006

CERTIFICATE OF TRANSMISSION / MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

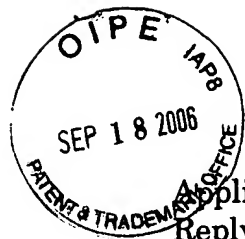
Signature

Typed or printed name

Paul D. Heydon

Date

13 September, 2006



Application No.: 10/828,630
Reply Brief

Applicants: Jill E. Parker et al.
Filed: 04/09/2004
Title: Curlicue Vaccine Strain of Bacillus Anthracis
T.C./Art Unit 1645
Examiner: Mark Navarro
Docket No.: AFD 503
Customer No.: 26902
Confirmation No.: 5340

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

Reply Brief

Sir:

In response to the Examiner's Answer of July 14, 2006, the Assignee (Secretary of the Air Force) respectfully submits the following Reply Brief.

Argument Concerning Claim 1

As repeatedly stated by the U.S. Court of Appeals for the Federal Circuit, "the enablement requirement is met if the description enables any mode of making and using the invention." *Invitrogen Corp. v. Clontech Laboratories, Inc.*, 429 F.3d 1052, 1071 (Fed. Cir. 2005) quoting *Johns Hopkins Univ. v. Cellpro, Inc.*, 152 F.3d 1342, 1361 (Fed. Cir. 1998). See also *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1335 (Fed. Cir. 2003) and *Engel Indus., Inc. v. Lockformer Co.*, 946 F.2d 1528, 1533 (Fed. Cir. 1991).

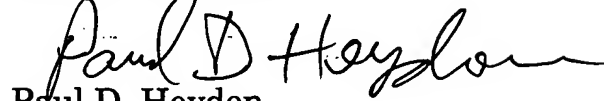
The losing parties in those cases mistakenly fixed their attention on one particular mode that was not described in the specification. However, that particular mode did not need to be described in the specification, where the description enabled another mode of making and using the invention. This error is similar to the error found in the Final Rejection in this appeal: a mistaken emphasis on prevention, along with an improper focus on only one word taken out of its context in Claim 1: "vaccine." This one word is improperly treated as if it were a red flag that prevents patenting. See Final Rejection Page 4, Line 4 and Page 5, Line 21. This is not a reasonable explanation as to nonenablement. The Office has not met its initial burden of setting forth a reasonable explanation as to why it believes that the scope of protection provided by the claim is not adequately enabled by the description. The assignee respectfully asserts that a prima facie case of nonenablement has not been established.

Conclusion

For the reasons advanced above and in the Appeal Brief, the Assignee respectfully contends that each claim is patentable, and requests the reversal of the Final Rejection.

Application No.: 10/828,630
Reply Brief

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul D. Heydon". The signature is fluid and cursive, with the first name "Paul" and last name "Heydon" clearly distinguishable.

Paul D. Heydon
Attorney for Assignee
Reg. No. 46,769
Commercial Law Division
Office of the Staff Judge Advocate
311th Human Systems Wing
Air Force Materiel Command
8010 Chennault Path
Brooks City-Base, TX 78235
(210) 536-5359